



## New Background Screening Legislation Affects New York Employers

New York recently enacted new legislation impacting all New York companies that procure criminal background checks on job applicants and employees from third-party background screening companies. The legislation represents an amendment to Section 380-c and 380-g of the General Business Law and goes into effect on February 1, 2009.

Under the new legislation, companies must provide individuals subject to criminal background checks with a copy of Article 23-A of the Corrections Law: "Licensure and Employment of Persons Previously Convicted of One or More Criminal Offenses." Article 23-A of the Corrections Law identifies a list of nine factors that an employer must consider before making an employment decision on the basis of an individual's criminal background. Such factors include: (1) the bearing of the criminal offense on the individual's fitness for duty, (2) the time that has elapsed since the occurrence of the crime, (3) the age of the person at the time of the offense, and (4) the seriousness of the offense. Generally, a company must provide a copy of Article 23-A of the Corrections Law both before it requests a criminal history report from a background screening company and when it receives a background screening report reflecting a criminal history "hit."

The recently passed legislation also requires employers to post a copy of Article 23-A of the Corrections Law and related regulations conspicuously in the workplace.

Through this legislation, New York intends to take a more serious interest in protecting employees and job applicants who have a criminal history and likely opens the door to more lawsuits against companies that conduct criminal background checks.

*For more information regarding this law, or for assistance in making sure your background screening processes are compliant with state and federal law, contact your Seyfarth Shaw attorney or visit our website at [www.seyfarth.com](http://www.seyfarth.com).*